Supreme Court, U.S.
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No. 87-845

In the Supreme Court of the United States

OCTOBER TERM, 1987

DAVID L. GOWDY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's false statement to the Farmers Home Administration was "material" for purposes of 18 U.S.C. 1001.

2. Whether the evidence was sufficient to support petitioner's obstruction of justice conviction.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A7) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 28, 1987. A petition for rehearing was denied on September 29, 1987 (Pet. App. A8-A9). The petition for a writ of certiorari was filed on November 21, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted of conspiring to defraud the United States, in violation of 18 U.S.C. 371; conversion of government funds, in

violation of 18 U.S.C. 641; making a false statement to a government agency, in violation of 18 U.S.C. 1001; and obstruction of justice, in violation of 18 U.S.C. 1503. He was sentenced to two years' imprisonment and a consecutive five-year term of probation.

1. On December 18, 1980, Billy Eaddy, petitioner's co-defendant, applied to the Farmers Home Administration (FmHA) for an emergency loan in the amount of $327,420. On January 9, 1981, the FmHA calculated the amount that Eaddy would be allowed to borrow. Two weeks later, on January 23, 1981, Eaddy submitted forms to the FmHA providing information about his debts and collateral. Each form was prepared by Eaddy and his creditors, including petitioner, who acted as Eaddy's accountant and his crop insurance salesman during the period in question. According to the debt statement, Eaddy owed his father $70,000, he owed Heston Evans $14,000, and he owed petitioner $17,047. Pet. App. A2; C.A. App. 44-45, 75-78, 115, 164.

On January 26, 1981, Eaddy's loan was approved by the FmHA's county supervisor (C.A. App. 784). The approval form stated that the application was approved "[a]s of this date 1/26/81" (*ibid.*). On March 16, 1981, the FmHA deposited a check in the amount of $327,420 in Eaddy's trust account. Pursuant to FmHA guidelines, the funds representing Eaddy's debts to his father, to Heston Evans, and to petitioner were immediately disbursed to those purported creditors, and the remainder was left in the trust account under the supervision of the FmHA. Pet. App. A3.

Three checks were later deposited in Eaddy's personal accounts. Two of the checks, which were from Eaddy's father and Heston Evans, were for the same amounts that those two individuals had received from the FmHA as a result of the loan. The third check, which was from petitioner, was for approximately $1,800 less than petitioner

had received from the FmHA. Eaddy used most of the funds to make personal investments, including a federal national mortgage discount note and a high interest treasury bill. Pet. App. A3.

On December 7, 1981, the FmHA county supervisor confronted Eaddy and accused him of falsifying documentation for his FmHA loan. Eaddy declined to respond to the accusation. A grand jury subsequently investigated Eaddy and, in connection with its inquiry, subpoenaed pertinent documents from petitioner's solely-owned insurance agency. In response to the subpoena, petitioner furnished the grand jury with a handwritten copy of a ledger from his agency. The ledger reflected that Eaddy owed $17,040 to petitioner's agency. In fact, it was later learned that Eaddy owed the agency only about $3,000. Pet. App. A3-A4, B4.

2. The court of appeals affirmed the convictions of both Eaddy and petitioner (Pet. App. A1-A7). It rejected petitioner's argument that his false statement (*i.e.*, the debt statement submitted on January 23, 1981) was not material because the government did not actually rely on it. According to the court, " '[t]here is no requirement that the false statement influence or [a]ffect the decision making process of a department of the United States government' " (Pet. App. A5 (citation omitted)). Instead, the court noted, the statement must simply have "the 'natural tendency to influence' the government agency" (*ibid.* (citation omitted)). Here, the court concluded, the debt statement met that test because "a disclosure which overstated [an] applicant's debt would be material in deciding whether to grant an emergency loan" (*ibid.*). The court of appeals also rejected petitioner's claim that the evidence was insufficient to support his obstruction of justice conviction (*id.* at A4).

ARGUMENT

1. Petitioner claims (Pet. 6-11) that his false statement was not material under the federal false statement statute, 18 U.S.C. 1001, because the FmHA had already decided to approve Eaddy's loan request before it received the debt statement. That contention is totally without merit because it is based on a false factual premise. Although the amount of the loan was initially calculated before the false statements were made, the loan was not officially approved until January 26, 1981, three days *after* the debt statement had been submitted (C.A. App. 115, 164, 784).[1] Moreover, the FmHA did not disburse the loan funds until March 16, 1981 (Pet. App. A3). Clearly, a document overstating an applicant's debt is material to the FmHA in deciding whether to grant a loan, how much to lend, and the amount to disburse to each purported creditor. Such a false statement is certainly capable of influencing the decisionmaker, which is all that is required to establish materiality under 18 U.S.C. 1001. See, *e.g.*, *United States* v. *Corsino*, 812 F.2d 26, 30-31 (1st Cir. 1987) (citing numerous cases).[2]

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[1] Petitioner erroneously states (Pet. 7), in what is apparently a typographical error (compare Pet. 8), that the debt statement was submitted on January 23, 1986.

[2] Petitioner errs in claiming (Pet. 9-11) that the decision below conflicts with *United States* v. *Beer*, 518 F.2d 168 (5th Cir. 1975); *Freidus* v. *United States*, 223 F.2d 598 (D.C. Cir. 1955); and *United States* v. *Radetsky*, 535 F.2d 556 (10th Cir.), cert. denied, 429 U.S. 820 (1976). In those cases, unlike the present case, the statement at issue could not have influenced the government agency involved. All three decisions concur with the decision below that a statement is material as long as it has a natural tendency to influence, or is capable of influencing, the decisionmaker. See *Beer*, 518 F.2d at 171; *Radetsky*, 535 F.2d at 572 n.17a; *Freidus*, 223 F.2d at 601-602.

2. Petitioner also claims (Pet. 11-14) that the evidence was insufficient to support his obstruction of justice conviction. That factbound question, which was resolved against petitioner by both courts below, does not warrant further review by this Court. See generally *United States* v. *Reliable Transfer Co.*, 421 U.S. 397, 401 n.2 (1975). As the court of appeals explained (Pet. App. A4), the evidence at trial showed that the original version of the ledger that petitioner submitted to the grand jury had been mysteriously "lost," that other records showed Eaddy's debt to be far less than that reflected on the ledger, and that most of the funds received by petitioner from the FmHA as a result of Eaddy's loan were later transferred to Eaddy (*ibid.*). That evidence is plainly sufficient to establish that petitioner endeavored to obstruct justice by knowingly submitting a false document to the grand jury.[3]

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[3] Petitioner errs in asserting (Pet. 13) that the present case conflicts with *Rodgers* v. *United States*, 402 F.2d 830 (9th Cir. 1968). In *Rodgers*, the court reversed a conviction for interstate transportation of a stolen automobile because the government had not only failed to offer any evidence that the defendant knew the vehicle in question was stolen but in fact had offered evidence supporting the contrary inference (*id.* at 833-834). The court emphasized that its holding was a narrow one "limit[ed] * * * to this case" (*id.* at 834). The facts here are readily distinguishable, since the inferences from the evidence plainly point to petitioner's guilt. See Pet. App. A6 (summarizing evidence).